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In the Supreme Court of the United States

October Term, 1958

No. 728

FELIX CORPSTEIN, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

No opinion was rendered by the United States District Court for the District of Kansas. The opinion of the Court of Appeals (Pet. 12-14) is reported at 262 F. 2d 200.

JURISDICTION

The judgments of the Court of Appeals in the two consolidated cases were entered on December 2, 1958. The petition for a writ of certiorari was filed on February 26, 1959. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Whether the imposition of civil penalties under the Agricultural Adjustment Act of 1938, on wheat produced in excess of a farm's wheat acreage allotment, is within the commerce power of Congress.

2. Whether the provisions for conducting a referendum to determine whether producers favor marketing quotas invalidate the civil penalty provisions of the Agricultural Adjustment Act of 1938.

3. Whether the exemption from regulation of wheat produced in states designated as outside the commercial wheat-producing area precludes the imposition of fixed acreage allotments in the major producing states.

STATUTE INVOLVED

The relevant provisions of the Agricultural Adjustment Act of 1938, 7 U.S.C. 1281, *et seq.*, as amended, are set forth in Appendix A to the Petition, pp. 9-11.

STATEMENT

These two cases, which were consolidated on appeal, were instituted by the United States for the purpose of collecting civil penalties under the Agricultural Adjustment Act of 1938, as amended, with respect to the defendants' wheat crops produced in 1955 and 1956. With respect to each year, the defendants were notified that they produced wheat in excess of their farm acreage allotment, and that they were required to pay a penalty on their farm marketing excess of wheat unless the excess wheat was

stored or delivered to the Secretary (Tr. 4-6, 44-47).[1] The defendants did not exhaust the available administrative remedy of appeal to their local review committee (7 U.S.C. 1363). However, in the actions to recover civil penalties, the defendants challenged the imposition of such penalties on factual and constitutional grounds (Tr. 7-11, 61-68). Summary judgment for the United States was entered in each case (Tr. 38-39, 77). On appeal, the judgments of the district court were affirmed (Pet. 12-14).

ARGUMENT

The decision below is clearly correct and no issue is presented which warrants further review. The power of Congress under the commerce clause to adopt the regulatory program for wheat provided for by the Agricultural Adjustment Act of 1938, as amended, is settled. *Wickard* v. *Filburn*, 317 U.S. 111, 118-129; *United States* v. *Haley*, No. 587, October Term, 1958, decided February 24, 1959. It is equally settled that the provision in the Act (7 U.S.C. 1336) for a referendum to determine whether farmers favor or oppose marketing quotas does not invalidate the regulatory program. See *United States* v. *Rock Royal Co-op.*, 307 U.S. 533, 577-578; *Currin* v. *Wallace*, 306 U.S. 1, 15-16.

The contention (Pet. 4-5) that federal regulation of interstate commerce must apply uniformly to all states was not raised in the Court of Appeals and in

[1] "Tr." references are to the printed transcript of record filed in the Court of Appeals.

any event is without merit. The Act provides that if the acreage allotment for wheat for any state is 25,000 acres or less, the Secretary may, in order to promote efficient administration of the Act, "designate such State as outside the commercial wheat-producing area for such marketing year" and farm marketing quotas and acreage allotments shall not be applicable in such state. 7 U.S.C. (Supp. V) 1335(e). This exemption provision is reasonable and does not render invalid the imposition of marketing quotas in the state in which petitioners reside. There is no requirement of "geographic uniformity" with respect to Congress' regulation of interstate commerce. *Secretary of Agriculture* v. *Central Roig Refining Co.*, 338 U.S. 604, 616. "To hold that Congress in establishing its regulation is restricted to the making of uniform rules would be to impose a limitation which the Constitution does not prescribe." *Currin* v. *Wallace*, 306 U.S. 1, 14.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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